



PROPOSED RULE MAKING

CR-102 (June 2012)**(Implements RCW 34.05.320)****Do NOT use for expedited rule making****Agency:** Department of Ecology AO# 08-07

- ☒ **Preproposal Statement of Inquiry was filed as WSR 11-22-024; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR _____; or**
☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

- ☒ **Original Notice**
☐ **Supplemental Notice to WSR _____**
☐ **Continuance of WSR _____**

Title of rule and other identifying information: The Department of Ecology (Ecology) proposes to adopt amendments to certain portions of the Sediment Management Standards (SMS) Regulations, chapter 173-204 Washington Administrative Code (WAC). This rule defines the requirements for managing contaminated sediments in Washington.

Hearing location(s):

See Attachment A.

Submit written comments to:

Name: Adrienne Dorrah
Address: Department of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504
E-mail: RuleUpdate@ecy.wa.gov
Fax: (360) 407-7154 by October 15, 2012

Assistance for persons with disabilities:

Contact Adrienne Dorrah at (360) 407-7195 by September 15, 2012

Persons with hearing loss, call 711 for Washington Relay Service.

Persons with a speech disability, call 877-833-6341.

Date of intended adoption: December 14, 2012(Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rule proposal is to implement changes to the state's Sediment Management Standards for cleanup of contaminated sediment sites to clarify requirements to protect human health and the environment. The amendments proposed include:

- Integrating requirements for sediment cleanup actions in the SMS rule with requirements in the Model Toxics Control Act Cleanup Regulation (WAC 173-340).
- Updating the SMS cleanup decision framework to address bioaccumulative chemicals.
- Proposing chemical and biological benthic criteria for freshwater sediments.
- Clarifying requirements for coordinating cleanup actions and source control measures.

Reasons supporting proposal: The current SMS rule does not include clear and implementable requirements for cleaning up sediment contaminated with bioaccumulative chemicals that pose a risk to both human health and the environment and freshwater sediment sites. These types of contaminated sediments is complicated by uncertainties about protecting human health, the timing and feasibility of source control, how to incorporate background levels of contamination, and liability associated with historical releases. The lack of clear rule requirements has caused lengthy cleanup delays, inefficient use of available cleanup funds which can result in continued exposure to unhealthy levels of hazardous substances. Rule revisions are needed to provide clear, implementable, and predictable requirements for sediment cleanup actions to make the cleanup of contaminated sediments more efficient, effective, and protective.

Statutory authority for adoption: The Model Toxics Control Act Chapter 70.105D RCW, and the Water Pollution Control Act Chapter 90.48 RCW.

Statute being implemented: RCW 70.105D Model Toxics Control Act

Is rule necessary because of a:

- Federal Law? ☐ Yes ☒ No
Federal Court Decision? ☐ Yes ☒ No
State Court Decision? ☐ Yes ☒ No
If yes, CITATION:

DATE

8/13/12

NAME Polly Zehm**SIGNATURE****TITLE** Deputy Director, Department of Ecology**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 15, 2012**TIME:** 8:29 AM**WSR 12-17-084**

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

N/A

Name of proponent: (person or organization) Department of Ecology

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Chance Asher	Department of Ecology – Lacey, WA	(360) 407-6914
Implementation....Chance Asher	Department of Ecology – Lacey, WA	(360) 407-6914
Enforcement.....Jim Pendowski	Department of Ecology – Lacey, WA	(360) 407-7177

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

☒ Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Adrienne Dorrah

Address: Department of Ecology
PO Box 47600
Olympia, WA 98504

Phone: (360) 407-7195

Fax: (360) 407-7154

E-mail: adrienne.dorrah@ecy.wa.gov

☐ No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Adrienne Dorrah

Address: Department of Ecology
PO Box 47600
Olympia, WA 98504

Phone: (360) 407-7195

Fax: (360) 407-7154

E-mail: adrienne.dorrah@ecy.wa.gov

☐ No: Please explain:

ATTACHMENT A – Hearing Times and Locations

Below is information on public hearings for the Sediment Management Standards rule. Ecology will be at each hearing location 30 minutes before the start of the hearing for an Open House. Following the Open House, there will be a short presentation from Ecology followed by a Question and Answer session. Testimony will start at the conclusion of the Q&A session. The times listed below are when the presentation will begin.

Hearing Locations:

- | | | | |
|------------------|--|------------------|---|
| 1. Date: | September 26, 2012 | 4. Date: | October 3, 2012 |
| Location: | Pacific Market Center
Suite 575
6100 4 th Avenue South
Seattle, WA 98105 | Location: | CenterPlace Regional Event Center
Great Room
2426 North Discovery Place
Spokane Valley, WA 99216 |
| Time 1: | 9:30 a.m. | Time: | 5:30 p.m. |
| Time 2: | 5:30 p.m. | | |
| | | | |
| 2. Date: | September 27, 2012 | 5. Date: | October 4, 2012 |
| Location: | Whatcom Community College
Heiner Theater
237 West Kellogg Road
Bellingham, WA 98226 | Location: | Hampton Inn Richland
Columbia Pointe Ballroom
486 Bradley Blvd
Richland, WA 99352 |
| Time: | 5:30 p.m. | Time: | 5:30 p.m. |
| | | | |
| 3. Date: | October 1, 2012 | | |
| Location: | Department of Ecology
Headquarters Office
300 Desmond Drive SE
Lacey, WA 98503 | | |
| Time: | 6:30 p.m. | | |